Nuts and Bolts Ethics for the Business and Transactional Lawyer

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LLCs, LPs and Partnerships

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Introduction – Basis of Liability

- Texas Disciplinary Rule of Prof Conduct
  - Liability implication of violations of ethics rules
  - Major duties owed by lawyers to clients
- Basis of Liability
  - Ethical Lapses – grievances - licensure
  - Negligence – money damages

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Introduction – Basis of Liability

- Violation of Rules as Sole Basis of Liability –not really, but...
  - Preamble, paragraph 15 – "These rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation ** does not give rise to private cause of action nor does it create a presumption that a legal duty to client has been breached."
  - Most malpractice suits come with a grievance, too!

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Negligent Misrepresentation –Watch out!

- Negligent Misrepresentation
  - Claims are now made based on negligent representation
  - TX SCt recognized a negligent representation cause of action in favor of 3rd party/non-client against attorney is special circumstances based on Restatement (Second) of Torts Sec. 552 (1977)
    - **Negligent misrepresentation is separate and distinct from professional malpractice and is <u>not dependent</u> upon the attorney–client relationship.**

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Scenario 1: Who is the Client?

- Lawyer A meets with 3 individuals in a hurry. No engagement letter. Lawyer A drafts company agreement for LLC; violent dispute develops between 3 individuals over C/A. Lawyer A does not file a Certificate of Formation because no one has agreed to reimburse Lawyer A the filing fee. Each individual gives different instructions to Lawyer A.
- Who is in charge? What courses of action are open to Lawyer A?

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